

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 CONCRETE NOR'WEST, A DIVISION OF  
4 MILES SAND & GRAVEL

5  
6 Petitioner,

7 v.

8 WHATCOM COUNTY,  
9

10 Respondent.  
11

Case No. 07-2-0028

**ORDER ON MOTION FOR  
RECONSIDERATION**

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13 THIS Matter came before the Board on Concrete Nor'West's motion for reconsideration of  
14 the Board's February 28, 2008 Order on Dispositive Motion dismissing the above-captioned  
15 appeal.<sup>1</sup> Whatcom County filed response to the motion on March 13, 2008.<sup>2</sup>  
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17 **I. DISCUSSION**

18 **Petitioner's Position**

19 Petitioner takes issue with Conclusions of Law H And K of the Board's Order:

20 H. Absent an allegation in the Petition for Review that the County misapplied its  
21 Mineral resource land designation criteria, and that Petitioner's property qualified for  
22 designation under those criteria the Petitioner has failed to allege violations sufficient to  
23 allow the Board to consider whether the County applied those criteria correctly pursuant to  
24 RCW 36.70A.290(1).

25 K. The violation of the County's comprehensive plan goals asserted in Issues 3 and 4 do  
26 not raise claims under express requirements of the plan with respect to the property at issue  
27 here, and therefore will not be considered by the Board pursuant to RCW 36.70A.290(1).  
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<sup>1</sup> Petitioner's Motion for Reconsideration, filed March 7, 2008.

<sup>2</sup> Respondent's Memorandum in Response to Motion for Reconsideration.

1 Petitioner asserts that it was a misinterpretation of both fact and law for the Board to  
2 conclude that Petitioner was required to provide a statement in its Petition for Review that  
3 the County misapplied its mineral resource land designation criteria.<sup>3</sup> Petitioner asserts that  
4 it could not present an issue statement indicating that the County misapplied the mineral  
5 resource land designation criteria because the County never formally misapplied the criteria,  
6 and that the County staff report indicated that Petitioner's property did meet the criteria. The  
7 Petitioner argues that "The error made by the County was the failure to designate the  
8 property even after they found it met the designation criteria."<sup>4</sup>  
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11 Petitioner also asserts that the Board's conclusion that the violations of the County  
12 comprehensive plan asserted in Issues 3 and 4 do not raise claims under express  
13 requirements of the plan should also "be stricken". Petitioner asserts that "The requirement  
14 for designation is derived from the Goal 8P statement. The required action is to designate."<sup>5</sup>  
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### 16 **County's Position**

17 The County responds that Petitioner's contention that a comprehensive plan goal "provides  
18 the express requirement of designation" is without merit, and is an interpretation never  
19 adopted by the County.<sup>6</sup> The County (not surprisingly) concurs with the Board's conclusion  
20 that "Goals 8H, 8K, 8P and 8P-1 state general objectives of the County's mineral resource  
21 land strategy; they do not require any particular action with respect to the Petitioner's  
22 application."<sup>7</sup>  
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25 Additionally, the County points out that there has never been a finding by the final decision  
26 maker, the County Council, that the designation criteria were met. While a county planner  
27 prepared a staff report indicating that in his opinion the criteria were met, the staff's findings  
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31 <sup>3</sup> Petitioner's Motion at 3.

32 <sup>4</sup> Id.

<sup>5</sup> Id. at 5.

<sup>6</sup> County's Response at 1.

<sup>7</sup> February 28, 2008 Order at 13.

1 were never endorsed or adopted by the County legislative body.<sup>8</sup> Any requirement to  
2 designate Petitioner's property is contained in the designation criteria and not the goals of  
3 the County's comprehensive plan.

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5 **Board Discussion**

6 A motion for reconsideration, pursuant to WAC 242-02-832(2), shall be based on at least  
7 one of the following grounds:

8 (a) Errors of procedure or misinterpretation of fact or law, material to the party  
9 seeking reconsideration;

10 (b) Irregularity in the hearing before the board by which such party was prevented  
11 from having a fair hearing; or

12 (c) Clerical mistakes in the final decision and order.

13 Petitioner asserts that "the Board needs to have a hearing on the merits of this case . . .  
14 when Respondent found that the Petitioner's property did in fact satisfy the mineral resource  
15 land designation criteria".<sup>9</sup> Petitioner is incorrect; the Respondent Whatcom County made  
16 no such finding. Petitioner states that "the error made by the County was the failure to  
17 designate the property even after they found it met the designation criteria."<sup>10</sup> Petitioner  
18 confuses County staff with the County legislative authority. While County staff may have  
19 concluded that Petitioner's property met the designation criteria, the County legislative body  
20 did not. As the County correctly points out, the staff report indicating that the criteria were  
21 met was generated by a Planning and Development Services employee. Those staff  
22 findings were never endorsed or adopted by the County legislative authority, the County  
23 Council. Therefore, the fact that staff report, but not the County legislative body, concluded  
24 that the designation criteria were met in no way prevented Petitioner from asserting in its  
25 petition that its property met the County's designation criteria for mineral resource lands. As  
26 we indicated in our February 28, 2008 order, in the absence of this allegation, the petition  
27 asserts no basis for the Board to decide whether the County's determination was in error.  
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32 <sup>8</sup> County's Response, at 2.

<sup>9</sup> Petitioner's Motion at 5-6.

<sup>10</sup> Id. at 3.

1 Likewise, we disagree with Petitioner's characterization of the County's obligations with  
2 regard to Goals 8H, 8K , 8P and 8P-1. These are general goals stating the objectives of  
3 the County's mineral resource land strategy; they do not require any particular action with  
4 regard to Petitioner's application.  
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6 We find that Petitioner has not demonstrated the existence of "errors of procedure or  
7 misinterpretation of fact or law, material to the party seeking reconsideration" within the  
8 meaning of WAC 242-02-832(2).  
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## 10 II. ORDER

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12 Based on the foregoing, Concrete Nor'West's motion for reconsideration of the Board's  
13 February 28, 2008 Order on Dispositive Motion dismissing the above-captioned appeal is  
14 DENIED.  
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16 SO ORDERED this 20th day of March, 2008.  
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James McNamara, Board Member

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22 Holly Gadbow, Board Member  
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